IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

DATE OF DECISION: 6.12.2006

Union of India

...Appellant

versus

Dilbagh Singh Singh and others.

... Respondents

CORAM:- Hon'ble Mr. Justice Uma Nath Singh.

Present: Mr.Kamal Sehgal, Advocate
for the appellant.
Mr.L.M.Suri, Sr.Advocate with
Mr.Neeraj Khanna, Advocate
for respondent Nos.2 and 3.

UMA NATH SINGH, J. (ORAL)

This FAO arises out of a composite award dated 20.9.1996 passed by learned Presiding Officer, Motor Accident Claims Tribunal, Ambala, in MACT Case No.132 of 28.10.1994 and MACT Case No.5 of 30.1.1995, awarding a sum of Rs.10,10,000/- in favour of respondent Nos.2 and 3, in death case of their only son Sandeep Kumar, aged 21 years, and Rs.5,000/- in injury case of Vinay Suri, the pillion rider of the scooter being driven by the deceased.

It appears that on the date of accident, i.e., 16.7.1994, deceased Sandeep Kumar was going from Timber Trail, District Solan, (HP) to his house in Sector 32-D, Chandigarh, on his scooter (No.CHM-4073) with the pillion rider Vinay Suri. It further appears that the deceased was driving the scooter at a moderate speed on his left side of the road. However, at about 6.15 P.M., near ESI Dispensary, HMT, Pinjore, the offending vehicle being a tanker bearing Registration No.DEL-3076 appeared from opposite side,

while being driven rashly and negligently and also in a zig zag manner at a very high speed. The offending vehicle came on its wrong side, causing the accident which resulted in death of the deceased and injury to the pillion rider. Accordingly, two claim petitions were filed before the Tribunal alleging rash and negligent driving on the part of the driver of the offending vehicle.

It may not be out of place to mention that, admittedly, the impugned award in the injury case of Vinay Suri has attained finality inasmuch as a revision petition filed against the award has been dismissed by this Court.

Heard learned counsel for the parties and perused the record.

Learned counsel for the appellant-Union of India assailed the award on various grounds like: the income of the deceased has been assessed on higher side without a reasonable basis; the road was slippery as it was raining at the time of accident, which had caused slipping of the scooter; and the Tribunal has fell in serious error in applying a higher multiplier of 21 in calculating the dependency, which is contrary to the ratio of a judgment of Hon'ble the Apex Court reported in 2006(2) PLR 329 (Bijoy Kumar Dugar versus Bidyadhar Dutta and others). Learned counsel further submitted that on the date of accident, the deceased being aged 21 years, was unmarried, and that his father was gainfully employed with a handsome salary of Rs.8,000/- per month on the post of an Assistant Director in the Education Department of Government of Haryana. This is also his submission that the deceased had started business only since July, 1993, and died within a year in the impugned accident. Thus, determination of dependency at Rs.5,000/- in his case does not appear to be just and

reasonable. The deduction of 1/5th amount from the dependency towards personal expenses is not justified on the facts as well as in law. Besides, he has also challenged the interest rate at 12% per annum on the ground of being on the higher side.

On the other hand, learned senior counsel, Shri L.M.Suri, supported the award and tried to justify it on the ground that the deceased was a qualified Electrical Engineer with promising career. He was a sales tax assessee (vide Ex.P-3), being a Government contractor, who used to supply goods to the Defence Department. Learned senior counsel further submitted that from the beginning of his business, the deceased was filing monthly sales tax returns (being Exs.P-5 to P-12). According to learned senior counsel, the total return filed as per the said exhibits was to the tune of Rs.3,94,229.30 paise with a tax amount of Rs.14,693/-. The deceased had also hired a business premises vide Ex.P-4. Thus, the earning of the deceased had progressively increased, and hence, the assessment of dependency at Rs.5,000/- appears to be just and reasonable. Learned senior counsel also justified the interest rate at 12% per annum on the basis of evidence so also three judgments of different High Courts (See: (i) 2005 ACJ 1368 (Madhya Pradesh High Court) (New India Assurance Co. Ltd. versus Hari Kishan and others), (ii) 2005 ACJ 1353 (Gauhati High Court) (Oriental Insurance Co. Ltd. versus Member, MACT, Kamrup and others), and (iii) 2005 ACJ 1202 (Bombay High Court) (Hemant Krishnanath Wadke versus Patheja Forging & Auto Parts Manufacturing Co. Pvt. Ltd. and others). Learned senior counsel further submitted that comparatively the compensation amount appears to be on lower side, although no appeal for enhancement has been filed. In support of his contention, he placed

reliance on a judgment of this Court reported in 2001(2) RCR (Civil) 527 (Dr.B.D.Gupta versus Smt.R.Rani Manoranjitham), wherein this Court has increased the multiplier from 10 to 18 in death case of a young man of 23 years in the accident. Learned senior counsel contended that the deceased was the only son of his parents. His father, though was employed in the Government of Haryana, was aged about 54 years and mother 50 years at the time of accident. The father was to retire shortly, therefore, the dependency of the parents would have been total on their only deceased son.

I have carefully considered the rival submissions and I find that the multiplier of 21 applied in the instant case appears to be on higher side. In a Division Bench judgment, which has been placed reliance upon by learned counsel for the claimants, the multiplier of 18 has been applied by the High Court in death case of a young man of 23 years. Moreover, in Schedule-II under Section 163-A of the Motor Vehicles Act, 1988 (for short `the Act') the multiplier prescribed for the age group above 20 years but not exceeding 25 years, is only 17. Hence, I hold that the multiplier of 17, and not of 21 as applied by the Tribunal, would be applicable in this case. Besides, deduction of 1/5th amount from the monthly dependency of Rs.5,000/- towards personal expenses also appears to be on lower side. Normally, in a case of death in the accident of an unmarried young man, the dependency would be upto 50% but since the deceased was the only son of his parents, I deem it expedient, in the interest of justice, to deduct 1/3rd amount from the dependency amount towards personal expenses. As regards assessment of dependency, the deceased was a qualified Electrical Engineer; he was working as a Government contractor under a sales tax certificate and was filing regular monthly return till his death; and his sales

tax returns disclosed that his earning had increased progressively. In this background, determination of dependency at Rs.5,000/- does not appear to be unreasonable. In regard to award of 12% interest on the compensation amount, in terms of the judgments of different High Courts, referred to hereinabove as cited by learned senior counsel for the claimants, only the prevalent interest rate has been awarded by the Tribunal. Accordingly, I find no reason to reduce the interest rate.

In the premises discussed hereinabove, the compensation amount would be reduced to Rs.6,80,136/- with 12% interest per annum from the date of filing of the application.

On deduction of 1/3rd amount from Rs.5,000/-, the monthly dependency would come to Rs.3,334/-, which on being multiplied by 12 would come to Rs.40,008/- towards annual dependency. As the multiplier of 21 has been found to be on higher side and a multiplier of 17 is to be applied, the total dependency amount would come to Rs.6,80,136/-. That apart, I also grant Rs.5,000/- towards funeral expenses and Rs.10,000/- for loss of love to the parents on the death of their only son. Thus, the total amount is worked out to be Rs.6,95,136/-, which shall carry the interest at 12% per annum from the date of application till the date of payment of compensation.

In the premises discussed hereinabove, the appeal is allowed in part and the rest of the impugned award shall remain intact.

6.12.2006 **(UMA NATH SINGH)**
pk **JUDGE**